

ELECTRONIC VERSION

**THE JURY AMENDMENT BILL 1996**

**LEGISLATION BULLETIN NO 2/96**

**KAREN SAMPFORD**

QUEENSLAND PARLIAMENTARY LIBRARY  
Publications and Resources Section

BRISBANE  
June 1996  
ISSN 1324-860X  
ISBN 0 7242 7173 2

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<b>DATE OF INTRODUCTION:</b>	16 May 1996
<b>PORTFOLIO:</b>	Attorney-General and Justice
<b>HANSARD REFERENCE SECOND READING:</b>	Weekly Hansard, 16 May 1996, pp 1191-93.

## **1. INTRODUCTION**

The purpose of the Jury Amendment Bill 1996 is to amend the *Jury Act 1995* (Qld) by:

- adding to the categories of persons who are not eligible for jury service:
  - mayors and other local government councillors: **proposed new s 4(3)(c)**;
  - lawyers actually engaged in legal work: **proposed new s 4(3)(e)**;
  - persons aged 70 years and over, unless the person elects to become eligible for jury service: **proposed new ss 4(3)(h) and 4(4)**, and
- making a number of technical amendments, raised by the Office of the Sheriff of Queensland, to facilitate the practical operation of the Act.<sup>1</sup>

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<sup>1</sup> Jury Amendment Bill 1996 (Qld), Explanatory Notes, p 1.

In introducing the amendment Bill to the Queensland Legislative Assembly on 16 May 1996, the Attorney-General and Minister for Justice, Hon D E Beanland MLA, said:

*I am sure that members will recognise that these proposed amendments contained in this legislation represent a genuine attempt to finetune the 1995 Act which, as I have said on previous occasions, is a praiseworthy initiative forming the law relating to juries. I put forward the view to the House that this Bill will make the legislation an even more effective package.<sup>2</sup>*

## 2. BACKGROUND

As previously explained in *Legislation Bulletin* No 2/1995,<sup>3</sup> statutory provisions governing juries were first enacted in Queensland in the form of the *Jury Act of 1867*. This Act was amended a number of times before being repealed by the *Jury Act 1929* which, for over 60 years, has constituted the major piece of Queensland legislation relating to juries and their composition in Queensland. On 14 September 1995, the Jury Bill 1995 was introduced to the Queensland Legislative Assembly by the then Labor government. The Bill was assented to on 9 November 1995.

The purpose of the Jury Act 1995 was to simplify and reform Queensland's jury system. The Act repealed and replaced the Jury Act 1929 in its entirety (Section 75 and Schedule 1), and amended the *District Courts Act 1967* (Qld) by repealing the provisions about juries which are contained in Part 3 of that Act (Section 76 and Schedule 2). Queensland's *Oaths Act 1867* was also significantly amended by providing that the oath to be taken by jurors includes a requirement that they keep their deliberations secret (Section 76 and Schedule 2).

Provisions about juries in criminal trials which were contained in Queensland's old *Criminal Code* were repealed by the new Criminal Code of 1995 and the redrafted provisions were placed in the Jury Act 1995. When the Jury Bill 1995, as introduced to the 47th Parliament, reached its Second Reading stage, it was explained that, because the new *Criminal Code* and the proposed new legislation relating to juries were complementary, it was intended that the new Jury Act and the *Criminal Code 1995* would come into force on the same date.<sup>4</sup>

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<sup>2</sup> Jury Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 16 May 1996, p 1193.

<sup>3</sup> *Reforming Queensland's Jury System: The Jury Bill 1995*, Legislation Bulletin No 2/95, Queensland Parliamentary Library, Brisbane, October 1995, p 2.

<sup>4</sup> Jury Bill 1995 (Qld), as introduced to the 47th Parliament, Second Reading Speech, Hon D M Wells MLA, *Queensland Parliamentary Debates*, 9 June 1995, p 12350.

The Criminal Code 1995 was assented to on 16 June 1995, but most of its provisions have not yet been proclaimed into force, their commencement having been postponed to a date to be fixed by proclamation.<sup>5</sup> By virtue of the *Acts Interpretation Act 1954* (Qld), and a regulation made under it, the period before the postponed provisions of the Code automatically commence has been extended until 14 June 1997.<sup>6</sup> However, the National/Liberal Coalition Government has since announced plans to repeal the 1995 Criminal Code.<sup>7</sup>

At the time of the introduction of the Jury Amendment Bill 1996 to the House, **the substantive provisions of the 1995 Jury Act had not yet been proclaimed into force.**

### 3. MAIN PROVISIONS OF THE BILL

#### 3.1 MORE REPRESENTATIVE JURIES

##### 3.1.1 The Background to the 1995 Jury Act

###### *Exemptions from Jury Service*

As previously discussed in *Legislation Bulletin* No 2/1995, under the *Jury Act 1929* certain categories of persons were disqualified from jury duty, while others were exempt.

Section 7 of the 1929 Act contained a number of disqualifications from jury service, including the expected disqualification relating to previous convictions but also the more arcane disqualification of anyone "*of bad fame or repute*" (s 7(1)(e)). Undischarged bankrupts were also disqualified from serving on a jury (s 7(1)(c)), as was anyone who was not able to read or write English (s 7(1)(d)).

Section 8 provided for a long list of exemptions from jury service. The list included Members of Parliament, officers of parliament, local government members, lawyers, ministers of religion, doctors, nurses, pharmacists, physiotherapists, university lecturers, school teachers, defence personnel, aircraft pilots and others. As well, under Section 8(3), any woman (irrespective of age) or any man aged between 65

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<sup>5</sup> *Criminal Code 1995* (Qld), s 2.

<sup>6</sup> *Acts Interpretation Act 1954* (Qld), s 15DA and Criminal Code Regulation 1996, Subordinate Legislation 1996, No 84, s 2(2).

<sup>7</sup> Governor's Opening Speech, *Queensland Parliamentary Debates*, 28 March 1996, p 213.

and 70 could opt out of jury service by informing the sheriff that they wished to be exempted. (Under Section 6(1), persons aged 70 years or over were not qualified to serve as jurors.)

The 1992 Nolan Report and the 1993 Report of the Queensland Litigation Reform Commission on *Reform of the Jury System in Queensland* both recommended substantial reduction in the statutory exemptions from jury service and that the present two categories of disqualified and exempt persons be changed so that there be only one category - persons automatically exempt from jury service. The major reasons put forward by the Litigation Reform Commission for widening the range of people eligible for jury service were three-fold:

- a) *By widening the range of people liable to jury service, juries will become more representative of the wider community. A jury is supposed to represent a random selection of a cross-section of the community. However, the width of current exempt occupations excludes significant sections of the community from ever sitting on a jury and thereby greatly reduces the degree of true community representation on jury panels.*
- b) *The effect of increasing the number of persons liable to serve as jurors will spread the onus of jury service more fairly across the community. In particular, this may alleviate the situation in some country areas (for example, Longreach) where there are recurrent difficulties in assembling sufficient jurors to form a panel. It will also alleviate the present position where particular individuals repeatedly perform jury service.*
- c) *In other Australian states, England and the United States the range of exemptions have been narrowed with no apparent undue effect.<sup>8</sup>*

### ***Excusals***

In its Report, the Queensland Litigation Reform Commission acknowledged that the system of exemption it proposed would mean that certain persons for whom jury service might cause hardship would nonetheless be eligible for jury service. The Commission suggested:

*Many medical professionals, teachers, pregnant women, carers of children, aged and infirm persons and providers of emergency services, for example, should obtain excusal, not because they are members of a particular class, but because in their individual cases jury service would create undue hardship or inconvenience.<sup>9</sup>*

Accordingly, the Litigation Reform Commission recommended that excusals from jury service should be available, in accordance with specified guidelines.

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<sup>8</sup> Queensland. Litigation Reform Commission, Report of the Criminal Procedure Division, *Reform of the Jury System in Queensland*, August 1993, p 4.

<sup>9</sup> Queensland. LRC, August 1993, p 6.

### 3.1.2 The 1995 Jury Act

#### *Exemptions*

In accordance with the thrust of the recommendations of the Queensland Litigation Reform Commission:

- there is only one provision of the Jury Act 1995 (Section 4(3)) under which there is a list of categories of persons who are not eligible to serve as jurors, and
- the number of classes of persons who are not eligible for jury service is far fewer than the number of classes of persons who were either disqualified or exempt under Sections 7 and 8 of the *Jury Act 1929*.

However, the classes of persons listed as ineligible for jury service under Section 4 of the Jury Act 1995 are not the same in all respects as those recommended by the Queensland Litigation Reform Commission.

In Section 3.1.3 of this Bulletin, each of the proposed 1996 amendments to Section 4 of the 1995 Jury Act is compared with the recommendations of the Litigation Reform Commission.

#### *Excusals*

The Jury Act 1995 provides for the sheriff or a judge to **excuse** persons from jury service (Section 5). Section 19 allows the sheriff to excuse a person on application by that person, either permanently or for a particular jury service period. Section 20 provides for a judge to excuse a person from jury service either on the judge's own initiative or at the request of a member of the jury panel who wants to be excused. A judge may excuse a person from jury service either permanently or for a particular period. However, when deciding whether to excuse a person, the sheriff or judge must have regard to specified criteria.

Section 21(1) lists the criteria to be considered by the sheriff or judge in deciding whether to excuse a person or not. The criteria cover circumstances where jury service could bring about severe personal or financial hardship to the person seeking to be excused, or substantial inconvenience to the public, or where a person's state of health or their being a carer would affect their ability to serve on a jury. Section 21 basically incorporates the guidelines proposed by the Litigation Reform Commission. However, in addition, by Section 21(1)(f), an open-ended category is created whereby the sheriff or a judge are required to have regard to any other matter stated in a direction issued by the senior judge administrator under Section 13(d) of the Act.

### 3.1.3 The Proposed 1996 Amendments

**Clause 3** of the Jury Amendment Bill 1996 amends s 4 of the Jury Act 1995 by increasing the categories of persons who are not eligible to serve as jurors under subsection 3 of Section 4 from nine to 12.

#### *Local government members*

Under **proposed new s (4)(3)(c)** of the Jury Act 1995, a mayor or other local government councillor will not be eligible for jury service. The 1996 provision is based on an amendment moved, unsuccessfully, by Mr Beanland MLA during debate on the Jury Bill 1995.<sup>10</sup>

The Queensland Litigation Reform Commission did not include members of local government among the classes of person whom it recommended should be automatically exempt from jury service.<sup>11</sup> However, this category of persons was exempt from jury service under s 8(1)(q) of the Jury Act 1929. That exemption dates back to 1929, when that consolidating legislation was first enacted.<sup>12</sup> Local government members were also exempt from jury service, prior to the enactment of the 1929 legislation,<sup>13</sup> and had been so since 1867, when the first general enactment dealing with juries was passed.<sup>14</sup>

The rationale for returning to the original position under the Jury Act 1929, by adding local government members to the classes of persons to whom automatic exemption from jury service should apply, as stated in the Minister's Second Reading Speech, is that:

*... these persons should be ineligible for much the same reasons as members of the Legislative Assembly, who are not required, likewise, to serve on juries. Their situation is largely similar to the circumstances in which we find ourselves as*

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<sup>10</sup> Jury Bill 1995 (Qld), Committee stage, Mr Beanland MLA, *Queensland Parliamentary Debates*, 31 October 1995, *Queensland Parliamentary Debates*, pp 732-733.

<sup>11</sup> Queensland. LRC, August 1993, pp 3-4.

<sup>12</sup> The relevant provision in the original *Jury Act 1929* (Qld) was s 8(xiv), and referred to members **and** clerks of local authorities.

<sup>13</sup> Jury Bill 1929 (Qld), Committee stage, Hon N F Macgroarty MLA (Attorney-General), *Queensland Parliamentary Debates*, 26 November 1929, p 1843.

<sup>14</sup> Section 2 of the *Jury Act of 1867* (Qld) (31 Vic No 34 ) provided that "... *the mayor aldermen councillors ... of any municipal corporation... are hereby absolutely freed and exempted from being returned and from serving upon any juries whatsoever*". Town clerks and other municipal officers were also exempt from jury duty.

*members of Parliament. Being elected representatives, they could feel inhibited during jury deliberations for a variety of reasons, and jury service has the potential to lead them to be in conflict with their constituency.*<sup>15</sup>

### A Comparative Survey

In Victoria, under the *Juries Act 1967*, mayors and municipal councillors are not ineligible to serve on juries. However, they are entitled as of right to be excused from jury service if they make a claim to be excused in accordance with the jury legislation in that state.<sup>16</sup> When the 1967 Juries Bill was originally introduced to the Victorian Parliament, it made provision for “*mayors, presidents, town clerks and secretaries of municipalities*” (but not local government councillors) to be excused as of right from serving as jurors. Representations were made by a number of shire councils requesting that municipal councillors should also be able to be excused as of right under the 1967 legislation (under the pre-existing legislation, local councillors were entitled to claim an excusal as of right<sup>17</sup>). For example, the Shire of Deakin submitted that:

*The council feels that a municipal councillor is already heavily loaded in the service of his community and should be one that could make application under the proposed provisions relating to mayors and shire presidents.*<sup>18</sup>

An amendment to this effect was subsequently moved, and agreed to, at the Committee stage of debate on the Bill in the Legislative Council.<sup>19</sup>

In all the other Australian states and territories, local government members are neither ineligible for jury duty, nor entitled to claim an exemption.

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<sup>15</sup> Jury Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 16 May 1996, p 1192.

<sup>16</sup> *Juries Act 1967* (Vic), s 4(4) and Schedule 4, Item 13.

<sup>17</sup> Juries Bill 1967 (Vic), Committee stage, Hon R J Hamer MLC, Minister for Local Government, *Victorian Parliamentary Debates* (Legislative Council), 6 December 1967, p 2929.

<sup>18</sup> Juries Bill 1967 (Vic), Second Reading Speech, Hon M A Clarke MLC, *Victorian Parliamentary Debates* (Legislative Council), 6 December 1967, p 2905.

<sup>19</sup> Juries Bill 1967 (Vic), Committee stage, Hon R J Hamer MLC, Minister for Local Government, *Victorian Parliamentary Debates* (Legislative Council), 6 December 1967, p 2929.

### ***Lawyers Engaged in Legal Work***

Under **proposed new s 4(3)(e)** of the Jury Act 1995, lawyers actually engaged in legal work will not be eligible for jury service. Under the Jury Act 1995, as it currently stands, lawyers are not exempt from jury duty: s 4, regardless of whether or not they are actually engaged in legal work. Under the Jury Act 1929, barristers, solicitors and conveyancers were all exempt from jury service: s 8(1)(e) (the exemption would appear to apply even if a member of the legal profession was not in fact engaged in legal work, so long as they were duly admitted).

The proposed 1996 amendments give effect to the views of the Litigation Reform Commission, which recommended that members of the legal profession, who have been admitted to practice and are actually engaged in legal work, should be exempt from jury duty.<sup>20</sup> **Proposed new s 4(3)(e)** would appear to be drafted widely enough to include not only barristers and solicitors in private practice, but also persons who have been admitted to practice and are engaged in legal work as government lawyers.

In his Second Reading Speech to introduce the 1996 amending Bill, Hon D E Beanland MLA expressed his concerns that:

*... the presence of practising lawyers on a jury may potentially, even unwittingly, have an undesirable effect on the outcome of a jury's deliberations. The possibility of having lawyers exert such an influence on their fellow jury members could produce a perception, if not an actual situation, in which jury verdicts are liable to be tainted. Further, persons who are admitted to practise as barristers or solicitors possess the status of officers of the court. This relationship places certain ethical and professional responsibilities on them. While it is not likely that jury service will lead to conflicts of interest arising out of the two roles, it has the potential to unnecessarily complicate the position of lawyers in respect of their professional relationship with the court system. The same situation does not apply as far as other professions are concerned. While it is probable that most, if not all, practising lawyers would be eligible and could be expected to apply for excusal under section 18(4) of the 1995 Act, it would be preferable to put the situation beyond conjecture and make them ineligible for jury service.<sup>21</sup>*

### A Comparative Survey

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<sup>20</sup> Queensland. LRC, August 1993, pp 3-4.

<sup>21</sup> Jury Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 16 May 1996, pp 1192-93.

Under the Victorian legislation, duly qualified legal practitioners are not eligible to serve on a jury.<sup>22</sup> There does not appear to be any requirement that the person be actually engaged in legal work. The Western Australian legislation specifically states that legal practitioners on the Roll of Practitioners kept under the *Legal Practitioners Act 1983* (WA)<sup>23</sup> are not eligible to serve as jurors, whether or not they are in practice.<sup>24</sup> The ineligibility applies to a person who is or has been a legal practitioner.

In South Australia, practising legal practitioners are ineligible for jury service,<sup>25</sup> and in the Northern Territory, they are exempt.<sup>26</sup>

Tasmania's *Jury Act 1899* provides that persons entitled to practise, and actually practising as barrister or solicitors, are exempt from jury duty: s 7A(a) and Schedule 1, Item 3(a). So too are persons entitled to practise as barristers or solicitors, and engaged in the work of the profession of barrister or solicitor, as employees of the Crown or a state instrumentality: s 7A(a) and Schedule 1, Item 3(b). In New South Wales, the *Jury Act 1977* makes barristers and solicitors,<sup>27</sup> Crown prosecutors<sup>28</sup> and Public defenders<sup>29</sup> ineligible for jury service. The *Juries Act 1967* (ACT) makes practising barristers and solicitors: s 11(g), and public servants in the Attorney General's Department, the Legal Aid Commission and the Office of the Director of Public Prosecutions, whose duties involve providing legal professional services, exempt from serving as jurors: s 11(v).

### ***Persons aged 70 years or over***

Under s 6(1)(b) of the *Jury Act 1929*, people aged 70 years or over were not qualified to serve as jurors. In examining the issues of qualification and exemption from jury service, the Queensland Litigation Reform Commission recommended that

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<sup>22</sup> *Juries Act 1967* (Vic), s 4(3) and Schedule 3, Item 1(b).

<sup>23</sup> *Legal Practitioners Act 1893* (WA), s 23.

<sup>24</sup> *Juries Act 1957* (WA), s 5(a)(i) and Schedule 2, Item 1(f).

<sup>25</sup> *Juries Act 1927* (SA), s 13(c) and Schedule 3.

<sup>26</sup> *Juries Act 1962* (NT), s 11 and Schedule 7.

<sup>27</sup> *Jury Act 1977* (NSW), s 6(b) and Schedule 2, Item 3.

<sup>28</sup> *Jury Act 1977* (NSW), s 6(b) and Schedule 2, Item 18.

<sup>29</sup> *Jury Act 1977* (NSW), s 6(b) and Schedule 2, Item 19.

persons aged 70 years or over should be automatically exempt from jury service. In reaching its recommendation, the Commission argued as follows:

*The proposed exemption of persons aged 70 years or over may appear unnecessarily discriminatory. This must be weighed, however, against the enormous administrative burden that would be placed on the Sheriff if he or she were required to contact all persons of a certain age in order to make some assessment of those who would be capable and those who would be incapable of serving on a jury. The age limit of 70 years suggested is not an arbitrary one - it is the age upon which it is considered undesirable to allow judges to remain in office. On balance, therefore, we suggest the adoption of a fixed line and recommend the exemption of persons aged 70 years or over.*<sup>30</sup>

However, the Jury Act 1995, as it currently stands, does not contain any upper age limit on jury service. An amendment to exempt people 70 years of age and over from jury service was moved at the Committee stage by Mr Beanland MLA, but was unsuccessful.<sup>31</sup>

Under **proposed new s 4(3)(h)** of the Jury Act 1995, a person aged 70 years or over will not be eligible for jury service, unless the person elects to be eligible for jury service under **proposed new s 4(4)**. **Proposed new s 4(4)** provides that a person aged 70 years or over may elect to be eligible for jury service by following a procedure to be set down by regulation. In introducing the amendment, Hon D E Beanland MLA advanced the following reasons for including persons aged 70 years and over in the categories of persons ineligible for jury service.

*... elderly people could feel threatened and overwhelmed by the prospect of sitting through lengthy and complex trials; the onus associated with applications for excusals would create unfair burdens for elderly persons and would carry no guarantee of acquiescence on the part of the sheriff; and the sheriff's workload in determining a potentially large number of applications for excusal on the part of these persons would create administrative difficulties. However, there would be some persons in this category who would be more than capable of carrying out jury service and would be enthusiastic to take on this form of service to the community. Accordingly, the amendment is such as to allow these people to 'opt in' for jury service at their own election if they choose to do so.*<sup>32</sup>

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<sup>30</sup> Queensland. LRC, August 1993, p 5.

<sup>31</sup> Jury Bill 1995 (Qld), Committee stage, Mr Beanland MLA, *Queensland Parliamentary Debates*, 31 October 1995, p 733-34.

<sup>32</sup> Jury Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 16 May 1996, p 1192.

Given that the right to serve on a jury is traditionally viewed as a democratic right akin to the right to vote,<sup>33</sup> the proposed amendments appear to strike a reasonable balance between the recommendations made by the Litigation Reform Commission, and the desirability of allowing older persons the option of participating in jury service. It can also be argued (as does the New South Wales Law Reform Commission) that the representative nature of the jury is likely to be maintained and enhanced if people of or above the age of 70 who want to serve on a jury can do so.<sup>34</sup>

### A Comparative Survey

In South Australia, persons over the age of 70 years are not qualified to serve as jurors: *Juries Act 1927* (SA), s 11(b).

In Tasmania<sup>35</sup> and Western Australia<sup>36</sup> only persons who have not attained the age of 65 years may serve on a jury.

In the Northern Territory, persons over the age of 65 years are exempt from jury service.<sup>37</sup>

In New South Wales<sup>38</sup> and Victoria<sup>39</sup> elderly persons are not automatically exempt from jury service, but may claim an exemption as of right. In New South Wales, an exemption may be claimed by persons who are 65 years of age or over. The recommendation of the NSW Law Reform Commission in 1986 that the age at which a person may claim exemption as of right from jury service on the ground of advanced age should be increased from 65 to 70 years<sup>40</sup> has not been implemented. In Victoria, a person must be over 65 to be entitled to be excused as of right from jury service.

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<sup>33</sup> New South Wales. Law Reform Commission, *Report of the New South Wales Law Reform Commission Criminal Procedure - The Jury in a Criminal Trial*, March 1986, p 55.

<sup>34</sup> New South Wales. LRC, March 1986, p 70.

<sup>35</sup> *Jury Act 1899* (Tas), s 4(1).

<sup>36</sup> *Juries Act 1957* (WA), s 5(a)(ii).

<sup>37</sup> *Juries Act 1962* (NT), s 11 and Schedule 7.

<sup>38</sup> *Jury Act 1977* (NSW), s 7 and Schedule 3, Item 4.

<sup>39</sup> *Juries Act 1967* (Vic), s 4(4) and Schedule 4, Item 14.

<sup>40</sup> New South Wales. LRC, March 1986, p 68.

In the remaining Australian jurisdiction (ACT), people of 60 years of age or over may claim an exemption from serving as jurors: *Juries Act 1967*, s 11(r).

### 3.2 DUTY OF POLICE TO MAKE INQUIRIES NEEDED FOR KEEPING A JURY ROLL

Section 12(1) of the Jury Act 1995 places an obligation upon police officers to make inquiries reasonably needed for, and to otherwise assist in, keeping a jury roll, if asked to do so by the sheriff of Queensland or the Electoral Commission. On their part, the sheriff of Queensland or the Electoral Commission must give police officers asked to assist in this way any information that may help the officers undertake the inquiries: s 12(2). These provisions effectively repeat the substance of what was contained in s 14 (ss 1 & 2) of the Jury Act 1929.

Section 12(3) of the 1995 Jury Act provides that the sheriff of Queensland or the Electoral Commission may arrange with the Police Commissioner for the police service to make inquiries and give assistance in maintaining a jury roll. Section 12(4) provides that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information for inquiries, or to the sheriff of Queensland or the Electoral Commission, under s 12. Equivalent provisions to ss 12(3) & (4) do not appear in s 14 of the Jury Act 1929.

**Clause 4** of the Jury Amendment Bill 1996 replaces the words “*sheriff of Queensland*”, wherever they occur in s 12, with the word “*sheriff*”. The effect of the proposed amendment is to enable sheriffs other than the sheriff of Queensland (eg the central sheriff, the northern sheriff, a deputy sheriff), to whom the function of keeping a jury roll for a jury district has been assigned under s 8 of the Jury Act 1995, to ask for police assistance in making inquiries needed to maintain a jury roll.<sup>41</sup>

### 3.3 FORMATION OF JURY PANELS

Section 13(c) of the Jury Act 1995 empowers the senior judge administrator to make practice directions about the formation of jury panels. However, s 36(3) says that a jury panel must be selected in a way decided by the sheriff. To rectify the anomaly, **Clause 6** of the Jury Amendment Bill 1996 adds a proviso to s 36(3). Under the proposed amendment, the section will now provide that a jury panel must be selected in a way decided by the sheriff, subject to any practice direction about the formation of jury panels which has been issued by the senior judge administrator pursuant to s 13(c).

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<sup>41</sup> Jury Amendment Bill 1996 (Qld), Explanatory Notes, p 3.

### 3.4 JURY LIST

Section 29 of the Jury Act 1995 is one of several sections (ss 29-31) designed to overcome abuses and excesses associated with jury vetting.<sup>42</sup> In his report into the selection of the jury for the trial of Sir Johannes Bjelke-Petersen, the Honourable William Carter QC described the problems identified with jury vetting as: “*likely to be more excessive, the longer the time made available to facilitate the process*”.<sup>43</sup> Section 29 gives effect to Carter QC’s recommendations (at pp 483-484 of his report) that limitations be placed upon access to lists of persons summoned for jury service, that their distribution be restricted, and that provision be made for their return and destruction. It allows limited access to the jury list for a limited time only before the trial commences.

Section 29(3) provides that, upon request, the sheriff must:

- give the party to a trial or his representative a copy of the list of persons who have been summoned for jury service, and
- advise them which of the persons have been instructed to attend on the day the jury for the party's trial is to be chosen.

By virtue of s 29(4), the list cannot be obtained earlier than 4 pm on the working day immediately prior to the day the jury for the trial is to be selected. Section 29(5) requires anyone who has received a copy of the list to return it to the sheriff as soon as practicable after the trial jury has been selected. Finally, s 29(6) says that the sheriff must destroy copies of the list returned to him or her.

Of his suggestions for reform, Carter QC said:

*These provisions are not intended to be exhaustive and are not drawn in a decisive final form, but are designed only to indicate the thrust of any reform. That thrust is focussed on the concept of giving access for a limited time to the limited range of persons who are the delegates of the accused to exercise his limited right of challenge.*<sup>44</sup>

The proposed amendments to s 29 contained in **Clause 5** of the Jury Amendment Bill 1996 are designed to cover the situation “... *where, for whatever reason, [a]*

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<sup>42</sup> For more information about the problem of jury vetting, see *Legislation Bulletin* No 2/95, pp 5-8.

<sup>43</sup> Queensland. Criminal Justice Commission, *Report by the Honourable W J Carter QC on his Inquiry into the Selection of the Jury for the Trial of Sir Johannes Bjelke-Petersen*, August 1993, p 480.

<sup>44</sup> Queensland. CJC, August 1993, p 484.

trial does not commence as scheduled and a jury is not selected".<sup>45</sup> Under s 29(5) of the 1995 Act, as it presently stands, there would be no obligation, in the circumstances described above, to return the list of persons summoned for jury service to the sheriff. To address this shortcoming, s 29(5) has been re-drafted to provide that a person who has been given a copy of the list of persons summoned for jury service must return it to the sheriff as soon as practicable after the trial jury is selected, unless the person has disposed of it in a way directed by a judge. **Proposed new s 29(6)** provides that a judge may direct a person who has received a copy of the list to dispose of it as the judge directs.

The requirement in s 29(6) of the 1995 Act that the sheriff is to destroy copies of the list returned to him remains, and is renumbered to become s 29(7).

### 3.5 TRANSITIONAL PROVISION

Section 78 of the Jury Act 1995 is a transitional provision. Under this provision, the statutory law of Queensland as in force immediately before the repeals or amendments made by the Jury Act 1995 would apply until a changeover day, and would continue to apply after the changeover day to all trials for which a jury was empanelled before the changeover day: s 78(1). The statutory law of Queensland in force immediately before the repeals or amendments made by the Jury Act 1995 would continue to apply after the changeover day to jurors and reserve jurors empanelled before the changeover day: s 78(2). The changeover day is a day fixed by regulation, but not later than one year after the commencement of the new legislation (ss 1 and 2 of the Jury Act 1995 commenced on the date on which the legislation was assented to; the remaining provisions have not yet been proclaimed into force).<sup>46</sup>

Under the proposed amendment contained in **Clause 8**, s 78 has been redrafted so that the statutory law of Queensland in force immediately before the repeals and amendments made by the 1995 Jury Act will apply to **all juries for which prospective juror notices were forwarded or given under s 22 of the 1929 Act, whether or not the juries had been formed before the Act's repeal.**

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<sup>45</sup> Jury Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 16 May 1996, p 1193.

<sup>46</sup> *Queensland Legislation Update*, Part 1 - Update to Queensland Legislation Annotations, Release No 36 (to 16 June 1996), p 64.

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